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OFFICE OF PETITIONS

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In re Patent No. 6,221,836 :
Issued: April 24, 2001 : REQUEST FOR INFORMATION
Application No.: 09/213,968 :
Filing Date: December 17, 1998 :
Attorney Docket No. 1207-003D :

This is a second request for information in response to the petition under 37 CFR 1.378(e) filed November 16, 2010.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed September 28, 2009. No additional fees are due.

The patent issued April 24, 2001. The 3.5 year maintenance fee could have been paid from April 24, 2004, through October 24, 2004, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from October 25, 2004, through April 24, 2005. The 3.5 year maintenance fee was not paid; the patent expired at midnight on April 24, 2005.

Petitioner maintains that the actions of the assignee, not Mr. Don Nickey—the registered agent and co-inventor the assignee charged with tracking and paying the maintenance fee—should be examined in determining whether the entire delay in paying the maintenance fee and filing a grantable petition under 37 CFR 1.378(b) was unavoidable.

Petitioner is required to address the following point:

- The USPTO must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those action or inactions. See *Link v. Wabash*, 370 U.S. 626, 633-634 (1962). Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133. The actions of the attorney are imputed to the client, for when a petitioner voluntarily chooses an attorney to represent him, the petitioner cannot later avoid the repercussions of the actions or inactions of this selected representative for clients are bound by the acts of their lawyers/agents, and constructively possess "notice of all facts, notice of which can be charged upon the attorney" *Id.*

It is noted that petitioner's November 16, 2010, filing relies, in large measure, on the premise that

only the assignee's actions are relevant in determining whether the delay was unavoidable. Given the holding of the court in Link v. Wabash as cited above, it is again requested that petitioner provide any, and all, information that petitioner may have regarding the actions or inactions of Mr. Nickey relative to the non-payment of the maintenance fee. This may include information about Mr. Nickey's procedures for tracking, docketing, and paying the maintenance fee and how Mr. Nickey's illness may have affected his failure to pay the 3.5-year maintenance fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
 Mail Stop Petitions
 Box 1450
 Alexandria, VA 22313-1460

By facsimile: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions